

ASSEMBLY BILL

No. 848

Introduced by Assembly Member McCarty

February 16, 2017

An act to amend Section 5703 of the Government Code, and to add Chapter 3.9 (commencing with Section 12147) to Part 2 of Division 2 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 848, as introduced, McCarty. Public contracts: University of California: California State University: domestic workers.

(1) Existing law requires a state agency to comply with specified procedures in awarding agency contracts. Existing law, with specified exceptions, prohibits a state agency authorized to enter into contracts relating to public benefit programs from contracting for services provided by a call center that directly serves applicants for, recipients of, or enrollees in, those public benefit programs with a contractor or subcontractor unless that contractor or subcontractor certifies in its bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers employed in California. Existing law imposes a civil penalty, as provided, for knowingly providing false information in that certification. Existing law also requires the contract to include a clause providing for a right by the state to terminate the contract for noncompliance and specified penalties, if the contractor or subcontractor performs the contract or the subcontract with workers not employed in California during the life of the contract.

The bill would prohibit the University of California, to the extent that the Regents of the University of California act to make the provisions

applicable, and the California State University from contracting for services with a contractor or subcontractor unless that contractor or subcontractor certifies under penalty of perjury in his or her bid for the contract that the contract, and any subcontract performed under that contract, will be performed solely with workers within the United States. This bill would prohibit the University of California, to the extent that the regents make applicable, and the California State University from allocating or expending funds for employment training for employees located in foreign countries. The bill would also specify that these provisions do not apply to a contract, if refusing to award that contract would violate the specific terms of federal trade treaties, as specified.

The bill would specify that these provisions do not apply to agreements entered into by the Treasurer in connection with the sale of any evidence of indebtedness.

By requiring contractors and subcontractors to make certifications under penalty of perjury, this bill would create a new crime and thereby impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:
3 (a) The United States has lost nearly five million manufacturing
4 jobs over the last 20 years, with at least 40 percent of these jobs
5 outsourced to a foreign country.
6 (b) Outsourcing by the state and local government technology
7 sector is a growing trend, with an estimated \$____ billion in net
8 contract value subject to outsourcing to foreign countries in ____.
9 By ____, an estimated \$____ billion in net contract value will be
10 subject to outsourcing by the state and local government technology
11 sector.

1 (c) Contractors and subcontractors are using taxpayer dollars
2 to create jobs in foreign countries. State taxpayer funds should be
3 used to create jobs in the United States and in California.

4 SEC. 2. Section 5703 of the Government Code is amended to
5 read:

6 5703. (a) Except as provided in subdivisions (b), (c), and (d),
7 the Treasurer, in exercising the duties of agent for offering and
8 selling bonds, whose duties include, among others, establishing
9 the timing of a sale, preparation or approval of the documentation
10 for the sale, sole authority to select the underwriters for negotiating
11 the sale, and executing the bond purchase agreement on behalf of
12 the state or the state's agencies, is responsible for developing and
13 implementing a competitive process for selection of underwriters
14 for negotiated offerings of bonds. The competitive process may
15 be conducted on-a *an* issue-by-issue basis or to establish one or
16 more pools of underwriters for various types of issues. The
17 competitive process shall have at least all of the following features:

18 (1) Solicitation of written qualifications from at least 20
19 underwriting firms.

20 (2) Consideration of the goals for minority and women business
21 enterprise participation in professional bond services contracts.

22 (3) The written submissions shall be available for inspection at
23 the office of the Treasurer for a period of at least six months.

24 (4) If a pool of underwriters is established, the competitive
25 process shall be repeated at least every 24 months to reestablish
26 the pool of underwriters.

27 (b) For negotiated offerings of bonds by state financing
28 authorities that act as conduits to provide financing to other public,
29 nonprofit, or private organizations, the Treasurer shall use the
30 competitive process described in subdivision (a) to establish one
31 or more pools of underwriters for each financing authority. The
32 Treasurer may make additions to a pool without competitive
33 solicitation, on a case-by-case determination upon the
34 recommendation of a project applicant, where the Treasurer finds
35 that the underwriter to be added has provided significant services
36 to the project applicant with the expectation of compensation for
37 those services from underwriting the revenue bonds which will
38 fund the applicant's project.

39 (c) The Treasurer may select underwriters for a negotiated sale
40 of bonds by means other than as described in subdivision (a) if the

1 Treasurer makes a written finding that extraordinary market
2 conditions do not allow enough time to comply with subdivision
3 (a) without risking financial detriment to the state.

4 (d) Subdivisions (a), (b), and (c) shall not apply to the issuance
5 of state bonds for which the Treasurer is precluded by statute from
6 selecting underwriters.

7 (e) For negotiated sales, the Treasurer shall maintain records of
8 all cost information pertinent to the initial offering of all state
9 bonds, except that in the case of bonds issued by a state financing
10 authority, as described in subdivision (b), the issuing state financing
11 authority shall instead be responsible for maintaining the same
12 cost information on bonds it has issued. The information shall
13 include, but not be limited to, all of the following:

14 (1) All amounts paid out of bond proceeds to the underwriter,
15 detailed by management fee, takedown, risk, and underwriter's
16 expenses.

17 (2) All costs paid out of bond proceeds to rating agencies for
18 rating of the bonds.

19 (3) All fees paid out of bond proceeds to bond counsels, trustees,
20 or financial advisers relating to the initial offering of the bonds.

21 (4) The interest rate to be paid on the bonds.

22 (f) For competitive sales, the Treasurer shall maintain records
23 of all bids submitted and the documentation of bid verifications
24 including the terms of sale and the calculation of net interest cost
25 or true interest cost.

26 (g) The State Auditor shall audit the cost records required to be
27 maintained pursuant to subdivision (e) and conduct a review of
28 the records required to be maintained pursuant to subdivision (f).

29 (h) The State Auditor shall report whether this section is being
30 fully implemented. The State Auditor shall make cost and interest
31 rate comparisons with similar initial bond offerings of other states
32 where possible. The State Auditor shall submit a report to the
33 Legislature on March 1, 1993, and March 1, 1995, for bonds sold
34 during the two calendar years immediately preceding the year in
35 which the report is due.

36 (i) ~~Section 10295 of, and Article 4 (commencing with Section~~
37 ~~10335) and Article 5 (commencing with Section 10355) of Chapter~~
38 ~~2 of Part 2 of Division 2 of, The following provisions of the Public~~
39 ~~Contract Code are do not applicable apply to agreements entered~~

1 into by the Treasurer in connection with the sale of any evidence
2 of ~~indebtedness~~; *indebtedness*:

3 (1) *Section 10295.*

4 (2) *Article 4 (commencing with Section 10335) of Chapter 2 of*
5 *Part 2 of Division 2.*

6 (3) *Chapter 3.9 (commencing with Section 12147) of Part 2 of*
7 *Division 2.*

8 SEC. 3. Chapter 3.9 (commencing with Section 12147) is added
9 to Part 2 of Division 2 of the Public Contract Code, to read:

10
11 CHAPTER 3.9. OFFSHORING UNIVERSITY OF CALIFORNIA AND
12 CALIFORNIA STATE UNIVERSITY CONTRACTS
13

14 12147. (a) Notwithstanding any other law, except as provided
15 in subdivision (e), neither the University of California nor the
16 California State University may contract for services with a
17 contractor or subcontractor unless that contractor or subcontractor
18 certifies under penalty of perjury in his or her bid for the contract
19 that the contract, and any subcontract performed under that
20 contract, will be performed solely with workers within the United
21 States.

22 (b) Notwithstanding any other law, except as provided in
23 subdivision (e), neither the University of California nor the
24 California State University may expend funds to train employees
25 located in foreign countries or train contract employees who plan
26 to relocate to a foreign country as part of the contract.

27 (c) The contract shall provide that, in the event a contractor or
28 subcontractor performs the contract or the subcontract with workers
29 outside the United States during the life of the contract, the contract
30 shall be terminated for noncompliance, and the contractor or
31 subcontractor shall forfeit penalties to the University of California
32 or the California State University, as appropriate, in an amount
33 equal to the amount paid by the university for the percentage of
34 work that was performed with workers outside the United States.

35 (d) This chapter does not apply to a contract if refusing to award
36 that contract, on the basis that the contractor or subcontractor does
37 not certify under penalty of perjury that the contract, and any
38 subcontract performed under that contract, will be performed solely
39 with workers within the United States, would violate the specific
40 terms of the Agreement on Government Procurement of the World

1 Trade Organization or any other bilateral or regional free trade
2 agreement that California has consented to.

3 (e) This chapter shall apply to the University of California only
4 to the extent that the Regents of the University of California act,
5 by resolution, to make it applicable.

6 SEC. 4. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.